

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: DANIEL ANZOLA, :	: :
: Plaintiff, :	: :
: - against - :	: 18-cv-11217 (VSB) (DCF)
: NANCY A. BERRYHILL, Acting :	ORDER
: Commissioner of Social Security, :	: :
: Defendant. :	: :
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VERNON S. BRODERICK, United States District Judge:

Before me is Magistrate Judge Debra C. Freeman's unchallenged Report and Recommendation, (Doc. 20), recommending that I deny Plaintiff's motion for summary judgment, (Doc. 12) and grant Defendant's cross-motion for judgment on the pleadings, (Doc. 14.) Because I find no clear error in the Report and Recommendation, it is ADOPTED in its entirety.

Plaintiff Daniel Anzola brings this action pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final determination of the Commissioner of Social Security (the "Commissioner") denying his application for Supplemental Security Income. (Doc. 1.) I referred this case to Magistrate Judge Freeman on March 21, 2019. (Doc. 8.) On July 12, 2019, Plaintiff filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, seeking reversal of the Commissioner's decision. (Docs. 12–13.) The Commissioner filed a cross-motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, seeking affirmance of her final decision. (Docs. 14–15.) Plaintiff filed his opposition to the Commissioner's cross-motion on October 4, 2019.

(Doc. 18.) Magistrate Judge Freeman issued a Report and Recommendation on December 20, 2019, recommending that I deny Plaintiff's motion, grant Defendant's cross-motion, and affirm the decision of the Commissioner. (Doc. 20 at 2.) She also recommended that I substitute the current Commissioner of the Social Security Information, Andrew M. Saul, as Defendant in place of former Commissioner Nancy A. Berryhill, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. (*Id.* at 1 n.1.) Neither party filed an objection to the Report.

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within 14 days of being served with a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). When a party submits a timely objection, a district court reviews *de novo* the parts of the report and recommendation to which the party objected. 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). When neither party submits an objection to a report and recommendation, or any portion thereof, a district court reviews the report and recommendation for clear error. *Santana v. Comm'r of Soc. Sec.*, No. 17-CV-2648 (VSB (BCM), 2019 WL 2326214, at *1 (S.D.N.Y. May 30, 2019); *Marte v. Berryhill*, No. 17-CV-3567 (VSB) (JLC), 2018 WL 5255170, at *1 (S.D.N.Y. Oct. 22, 2018); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Here, although the Report and Recommendation explicitly provided that "[t]he parties shall have fourteen (14) days from service of this Report to file written objections," (Doc. 20 at 42), neither party filed an objection. I therefore reviewed Magistrate Judge Freeman's thorough and well-reasoned Report and Recommendation for clear error and, after careful review, found

none. Further, I find substitution pursuant to Rule 25(d) to be appropriate in light of the fact that Nancy A. Berryhill has been replaced as Commissioner by Andrew M. Saul.

Accordingly, I ADOPT the Report and Recommendation in its entirety. Plaintiff's motion for summary judgment is DENIED. Defendant's cross-motion for judgment on the pleadings is GRANTED and the decision of the Commissioner is AFFIRMED.

The Clerk of Court is respectfully directed to substitute Andrew M. Saul as Defendant in place of Nancy A. Berryhill, to terminate any open motions, and to close this case.

SO ORDERED.

Dated: September 21, 2020
New York, New York



Vernon S. Broderick
United States District Judge